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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 26, 2012

1:17 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc# 90, 47) Telephone Status Conference, on the Record, RE:
Motion Authorizing The Debtors To Continue To Perform Under The
Ally Bank Servicing Agreements In The Ordinary Course Of
Business.

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P R O C E E D I N G S

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THE COURT: All right. This is Judge Glenn. We're on the record in Residential Capital, LLC, number 12-12020. I apologize for being late for the hearing.

I have the list of appearances in front of me.

Mr. Eckstein, are you going to begin?

MR. ECKSTEIN: Your Honor, thank you very much. I'm going to have my partner, Brad O'Neill, actually handle the discovery issues, if that's acceptable.

THE COURT: Okay.

MR. O'NEILL: Good morning, Judge Glenn. This is Brad O'Neill.

As I see it, there are two principal issues from the perspective of the committee for this hearing on the 24th, and they relate, actually, not surprisingly, to documents and to depositions. We served document requests on the debtors back on July the 6th and on AFI on, I believe, the beginning of this week after receiving the Marano declaration the week before that.

To date, we have received comparatively few documents. We are promised additional documents, but as of now, we don't have any electronic discovery, we don't have complete board minutes, and we don't have other material documents. We are told that -- and I believe that parties are working to produce those documents, but we're told by the debtors that they can't

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1 get us the first wave of electronic discovery until Monday, and
2 they don't think they can complete production until
3 Wednesday -- or late Tuesday, maybe Wednesday, they say. And
4 AFI is prepared, I guess, subject to the resolution of some
5 issues relating to a protective order and the committee's
6 willingness to accept the documents pending resolution of that
7 on a professionals-eyes-only basis, to begin production this
8 evening but, again, can't commit to finishing production before
9 mid-next week.

10 That presents a problem, Your Honor, because there are
11 three declarants in the case, all of whom need to be deposed,
12 and as well as we've asked for a 30(b)(6) from Ally Bank and a
13 witness from AFI, so that's five depositions. Even if we were
14 to double or triple track, which I think we're prepared to do
15 in light of Your Honor's schedule, it's extremely tight, almost
16 impossible, I think, to get properly prepared for those
17 depositions if we don't have documents before, at a minimum,
18 the very beginning of next week.

19 So that's issue number 1. And I guess issue number 2
20 is depositions which I've described for you, as well. I
21 believe the debtors are interested in obtaining some form of
22 preview of our arguments, but I'll let them speak for
23 themselves on that issue.

24 THE COURT: Who's going to speak for the debtors?

25 MR. ENGELHARDT: Good afternoon, Your Honor. This is

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1 Stefan Engelhardt from Morrison & Foerster.

2 THE COURT: Go ahead.

3 MR. ENGELHARDT: With respect to the discovery, we are
4 making all due efforts to complete our discovery as promptly as
5 possible. The hold-up here is technical. We received proposed
6 search terms from the committee on Sunday night. On Monday,
7 the debtors made efforts to identify where the electronic
8 information would be stored and gathered; that was done. The
9 data was collected on Tuesday and Wednesday and is now being
10 sent for processing today. We imagine that will be ready for
11 review internally by attorneys for production and privilege
12 commencing hopefully tomorrow. We will be rolling it out in
13 waves on a rolling production to get this into the creditors'
14 committee's hands as quickly as possible.

15 MR. O'NEILL: Your Honor, Brad O'Neill. If I may
16 respond.

17 THE COURT: Sure.

18 MR. O'NEILL: Our original request delivered on July
19 6th requested electronic discovery, and it was not until the
20 very end of last week that we learned that the debtors had not
21 conducted any form of search for electronic information, and
22 that's why search terms were delivered late. But basically we
23 assumed they were searching, and they were not.

24 MR. ENGELHARDT: Your Honor, Stefan Engelhardt for the
25 debtors.

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The discovery request that the committee sent to the debtors on July 6th was an informal letter discovery request.

THE COURT: That's usually enough, as far as I'm concerned.

MR. ENGELHARDT: It was contemplating a hearing on July 24th with production to start within a couple of days and end within a week. Under that time frame, it would have been impossible to conduct any type of electronic discovery review, and we didn't contemplate that the debtors were seeking -- in the absence of proposed search terms or requesting a meet and confer, on those -- what the scope of electronic discovery would be, we did not contemplate that the committee would be seeking electronic discovery. As soon as we learned that they would like electronic discovery, we kicked up the process immediately and it's proceeding forthwith.

MR. O'NEILL: Your Honor, the informal request -- and I'm sure everyone on this call was sent out one of these requests -- it's a letter with a document request attached to it, a formal document request that doesn't have a caption on it, and it's got all the standard definitions, and it's quite clear that it seeks electronic information. There was no ambiguity about it.

THE COURT: Well, as far as I'm concerned, where the parties are working on an expedited basis, it's much more common, certainly in bankruptcy, to have -- you want to call

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1 them informal, I don't think there's very much informal about
2 them -- letter requests for documents. I've always considered
3 them and treated them the same way as a formal document
4 request. You can't sit back and ignore the request. If you're
5 going to do that, you've got to put the other side back on
6 notice that we'll consider your request when you serve formal
7 request.

8 The reality here is that the underlying issues are
9 complex, and the committee is entitled to its discovery before
10 a contested hearing goes forward. I understand the need for
11 expeditious hearings, but the parties are entitled to discovery
12 before they have to go to a contested evidentiary hearing.

13 So what is it, Mr. O'Neill, what is it that you would
14 like?

15 MR. O'NEILL: Well, Your Honor, I think the schedule
16 would be more manageable if there were an additional week.
17 Then documents could be produced next week, we could conduct
18 the depositions in a more orderly fashion the following week,
19 and then Your Honor could have the hearing the week after that,
20 or rather we could submit all the materials ahead of time so
21 Your Honor could be properly prepared for the hearing when we
22 get to that. I think right now we're on for the 14th; I think
23 a hearing the following week with the schedule adjusted in that
24 fashion would be appropriate.

25 MR. ENGELHARDT: Your Honor, that would present great

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1 problems --

2 THE COURT: This is Mr. Engelhardt speaking?

3 MR. ENGELHARDT: I'm sorry, Your Honor. Yes, this is
4 Stefan Engelhardt on behalf of the debtors.

5 That would present incredible problems on behalf of
6 all the estates here. The current servicing agreement under
7 which the debtors are operating expires, I believe, on August
8 20th. As soon as that is gone, there is no servicing
9 agreement. There is a great risk, from what I understand from
10 AFI, that the FDIC could very well instruct the servicing of
11 the loans to be pulled, and it would cause catastrophic damage
12 to the estates.

13 THE COURT: Well, that's very nice. So then you put
14 in another twenty people to produce all electronic discovery by
15 Monday. Is that what you want? I want everything produced;
16 you make everybody available for deposition. If you haven't
17 produced all of the requested discovery by Monday, I will take
18 appropriate action. Do you want sanctions? Tell me what you
19 want.

20 You can't -- I understand you're saying it's urgent
21 that this hearing go forward. It is also essential that the
22 objectors, and this is not a case -- look, I'm coming across
23 probably too hard. I'm not accusing anybody of bad faith on
24 either side, but it's the debtor that's driving this very
25 aggressive schedule. If the discovery that the committee is

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1 seeking to take is reasonable -- nobody has suggested it's
2 not -- you can't expect to go forward with an evidentiary --
3 they can't be expected to go forward with depositions without
4 the documents they need to conduct the depositions. Okay,
5 that's point 1.

6 You've not suggested that the discovery they've
7 requested is unreasonable. And so there are a couple of
8 choices. Either I just order that you do the impossible,
9 you're saying it's impossible. You just -- I don't care what
10 resources you have to put to it; you do it. You tell your
11 client they've got to do it. If they don't do it, we'll deal
12 with it. I'll just tell you, just look at my order in In Re:
13 Velo imposing sanctions. I continued a preliminary injunction,
14 in effect, beyond the fourteen days that the rules permit
15 because the nondebtor defendant in that case didn't produce all
16 of the discovery including electronic discovery within the time
17 required for a hearing.

18 And, I mean, look, you've got to do one of two things:
19 either you find a way to accommodate the committee's discovery
20 request, putting whatever resources are necessary to get them
21 the information, not rolling production. If you can't live
22 with it -- if you can't get them the information by Monday,
23 then it seems to me the hearing shouldn't go forward, because
24 without the documents, they can't go ahead and take the
25 depositions.

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1 What is it that -- let me ask you, the committee has
2 said what they want, what is it that you want, Mr. Engelhardt?

3 MR. ENGELHARDT: Your Honor, I would -- this is Stefan
4 Engelhardt. Your Honor, I was hopeful that the debtors would
5 be able to commence a rolling production on Monday concluding
6 by Wednesday with depositions on Thursday and Friday.

7 THE COURT: So, Mr. O'Neill, why isn't -- tell me why
8 that's not reasonable.

9 MR. O'NEILL: Because I believe, Your Honor, that
10 we're going to get a huge data dump, and we are not going to be
11 able to get through it in time to uniquely prepare for the
12 depositions. Frankly, I think getting this stuff by Monday is
13 tight, but getting it by Wednesday, I think, is impossible.

14 THE COURT: Tell me what the issues for this
15 evidentiary hearing are from the committee's standpoint.

16 MR. O'NEILL: The issues are going to relate to the
17 debtors' exercise of its business judgment, Your Honor, and in
18 particular, whether they acted with appropriate -- whether they
19 were disinterested in the transaction, whether they acted with
20 due care and in good faith and can sufficiently satisfy
21 heightened standards because we believe this transaction is an
22 interested-party transaction, at least as relates to the
23 parent, and also depending on if Your Honor decides to apply
24 just the standard business judgment rule, whether they can
25 satisfy the requirements to meet that.

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1 THE COURT: Mr. Engelhardt, what do you see the issues
2 as?

3 MR. ENGELHARDT: Your Honor, I see the issues as it is
4 an exercise of the business judgment of the debtors. The
5 committee has raised principally the negotiation and execution
6 of two documents, the first being what has been termed the
7 January 30th, 2012, support letter, and also the execution of
8 the new servicing agreement which is under the Court's
9 consideration on this motion. So whether the debtors exercised
10 their business judgment given the fiscal realities that they
11 were facing and, in the backdrop of the DOJ settlement, as to
12 whether they exercised their business judgment, this --

13 THE COURT: Is it entire fairness standard?

14 MR. ENGELHARDT: It would be the business judgment
15 standard, Your Honor.

16 THE COURT: Well, is it a related-party transaction?

17 MR. ENGELHARDT: It is a related-party transaction,
18 Your Honor.

19 THE COURT: And was it approved by a majority of the
20 independent directors?

21 MR. ENGELHARDT: I believe it was. I cannot speak
22 definitively to that, Your Honor.

23 MR. O'NEILL: That's interesting, Your Honor, because
24 when I asked about board minutes relating to the servicing
25 agreement, I was told there weren't any and that there hadn't

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1 been a meeting. So, I mean, that's the sort of factual issue I
2 think you're going to be ask to consider on the 14th.

3 THE COURT: And if the entire fairness doctrine
4 applies, what is the -- what do you anticipate the evidentiary
5 showings for each side to be?

6 MR. O'NEILL: Your Honor, from the committee side, we
7 believe there is a preexisting indemnification from AFI to Ally
8 Bank entered into at the inception of the DOJ's investigation,
9 and the transactions that we're questioning here effectively
10 transferred that liability to the debtors, and the current
11 motion seeks to pay that liability in its entirety out of
12 debtors for the benefit of the parent and for the benefit of a
13 nondebtor subsidiary.

14 THE COURT: How many people are working on -- Mr.
15 Engelhardt, how many people, lawyer and nonlawyers and
16 consultants or whoever, is working on production of electronic
17 and paper information?

18 MR. ENGELHARDT: Your Honor, right now, we are
19 currently gathering a team of all available associates to
20 commence the review process. Counsel at Carpenter Lipps, who
21 have been conducting the 2004 electronic discovery which has
22 been going on simultaneously, is conducting all -- is gathering
23 all available associates. We will see what that availability
24 shows, and then we will endeavor to go firm-wide at Morrison &
25 Foerster to devote as many resources as necessary to get this

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1 production complete.

2 THE COURT: Who's doing the electronic discovery? I
3 mean, you've got to have nonlawyers, professional and
4 consultants who are -- how is that being done?

5 MR. ENGELHARDT: We are doing it through a company
6 called DTI, which is loading it onto a review database.

7 THE COURT: What's the period -- the time period
8 that's covered by the electronic discovery request?

9 MR. ENGELHARDT: We are -- the time period goes back
10 to -- that was requested goes back to January -- goes back to
11 2010. I informed the committee earlier in the week that all of
12 that is on tapes and will not be able to be loaded. We have
13 gathered materials on the server for January 2012, so the
14 review will be from 2012 onward.

15 MR. O'NEILL: They did inform us of that, Your Honor,
16 and although -- I suppose we'd like to go back -- we don't need
17 to go back to the beginning of 2010; we'd like to go back to
18 the first -- the last couple months of 2011, but we understand
19 the difficulties of getting things on tape and the
20 practicalities of the timetable here, so we haven't pushed it.
21 From January 1, 2012, forward would be sufficient, if possible.

22 THE COURT: And that's all on hard drives, Mr.
23 Engelhardt?

24 MR. ENGELHARDT: That is correct. That has been
25 collected as of last night, and it's going through the

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1 processing process, as we speak. It will be filtered under the
2 requested search terms provided by committee counsel and made
3 available for review as quickly as possible.

4 MR. O'NEILL: Your Honor, we might be able to bridge
5 the gap here. I don't know what Your Honor's calendar looks
6 like, but if Your Honor has availability at the end of the week
7 of the 14th, that might introduce three additional days into
8 the schedule that would allow them to produce and allow proper
9 preparation for the depositions. And that would also avoid --
10 that would also get a hearing in before the expiration of the
11 prior servicing agreement.

12 THE COURT: What's that expiration date again?

13 MR. ENGELHARDT: The expiration date, I believe, is
14 August 20.

15 MR. SCHROCK: Your Honor, it's Ray Schrock on behalf
16 of Ally Financial and Ally Bank. That's correct.

17 THE COURT: Look, all well and good for you, but it
18 leaves me no time for a decision. I'm not going to be put in a
19 corner.

20 MR. SCHROCK: Your Honor, it's Ray Schrock again. We
21 appreciate that. We feel at Ally Financial and Ally Bank we're
22 between a rock and a hard place; we're getting pressure from
23 our regulators at this point.

24 THE COURT: Well, tell the regulators to come in here
25 and let me talk to them because it's fine for them to put

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1 pressure on, but there's only so -- I don't want to hear that,
2 oh, there's all this pressure, there's all this pressure. This
3 is moving forward expeditiously.

4 MR. SCHROCK: Certainly.

5 THE COURT: The committee is entitled to an
6 opportunity -- no one has suggested, and certainly from nothing
7 I've observed, that the committee is dragging its feet on any
8 of this. You all want to get a prompt resolution, but the
9 committee is entitled to a fair opportunity to take its
10 discovery, prepare its case, present its objections if they
11 can't be worked out. I don't want to be told that, well, if
12 you move the hearing to the 16th and 17th, that's before the
13 Monday deadline of the 20th, because then it doesn't leave me
14 any time to do what I might need to do at that point to
15 consider the evidence, come to a reasoned decision.

16 MR. SCHROCK: Your Honor, it's Ray Schrock. Again,
17 I'm very sensitive to that. If I can make a suggestion, just
18 let us know what your availability is, and we'll go back and
19 speak to them. And if there's an issue, we could always come
20 back to the Court and deal with it. But I fully appreciate how
21 full your calendar is, and we appreciate the expeditious time
22 frame. We're not looking to jam anyone here, Your Honor. We
23 had this motion up for a couple months, so we're just trying to
24 move it along.

25 THE COURT: How many witnesses to people anticipate

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1 for an evidentiary hearing?

2 Mr. O'Neill?

3 MR. O'NEILL: I'm sorry, Your Honor. I didn't hear
4 you.

5 THE COURT: How many witnesses do you anticipate
6 testifying at an evidentiary hearing?

7 MR. O'NEILL: I think -- Your Honor, it's a little bit
8 tough to say before the depositions, but I think most of these
9 witnesses are their witnesses who would be presented by them
10 through deposition, then maybe would be subject to cross to the
11 extent, if necessary, beyond what we get out of the deposition
12 transcripts and the designations that will be submitted to you.
13 There might be testimony from the Ally or AFI witness, and it's
14 probably on an adverse basis.

15 MR. MCKANE: And Your Honor, this is Mark McKane on
16 behalf of AFI. If you just look at the number of depositions
17 that they have requested, I believe that they've asked for six.
18 So to the extent that you're going to be evaluating written
19 directs and having cross-examination live, which is your
20 practice, there's a chance for up to six witnesses and possibly
21 more, depending on what the committee requests. As it relates
22 to AFI, we have not actually received the 30(b)(6) notice yet,
23 that they've asked for, but we've -- they've given us generally
24 the topics, and we're going to do what we can to make a witness
25 available and have already worked on that process even before

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1 we got the request.

2 MR. ENGELHARDT: Your Honor, this is Stefan Engelhardt
3 of Morrison & Foerster for the debtors. The debtors' case will
4 go on three declarations, and that would be our direct case as
5 we anticipate it, and then the witnesses will be made available
6 for cross-examination. So while I understand what Mr. McKane
7 is saying, there may be as few as three live witnesses.

8 (Pause)

9 THE COURT: Okay. The pause is I'm looking at my
10 calendar.

11 (Pause)

12 THE COURT: Okay. I mean, I certainly realize the
13 burden, particularly from electronic discovery, and it is
14 difficult, often, to predict precisely how much time is going
15 to be required to complete it. I'm prepared to move the
16 evidentiary hearing as follows -- just hold on a second again.

17 Further delay caused by my computer freezing up. Just
18 bear with me.

19 (Pause)

20 THE COURT: I mean, I can move the hearing a couple
21 days. I'm prepared to start it on August 16th, which is a
22 Thursday, beginning at 8:30 in the morning and going until 7
23 o'clock at night. I have two other short matters scheduled
24 that need to go forward; they'll be very short. They're
25 scheduled for 10 o'clock. I estimate that at most it will take

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1 a half hour, so we would break to do that. I need to end by 7
2 o'clock because of other commitments in the evening. We'd
3 resume, if necessary, at 8:30 on Friday morning and continue no
4 later than 5 o'clock, if necessary.

5 My willingness to do that is contingent on the
6 deadline for the expiration date of the servicing agreement
7 until Friday, August 24th, at 5 p.m. The purpose of that is to
8 allow me sufficient time to consider and rule. Whether it's
9 going to take me all that time, and I'm going to try and do it
10 as expeditiously as possible, but I have -- every day the week
11 of the 20th, I've got a calendar, which I'm not altering.

12 If AFI or Ally Bank is unwilling to extend the
13 expiration date -- who are the parties to the agreement?

14 MR. SCHROCK: Your Honor, Ray Schrock for AFI and Ally
15 Bank. It's Ally Bank and the debtors.

16 THE COURT: Okay.

17 MR. O'NEILL: GMAC Mortgage.

18 THE COURT: All right. If Ally Bank and the debtors
19 can't agree on that extension -- and let me say, with this,
20 even if it's only moving the dates a few days, that would leave
21 in place that document production begins on Monday, is
22 concluded by Wednesday of next week. If Ally Bank is unwilling
23 to move the expiration date, then the hearing remains the 14th.
24 All document production must be completed by 12 noon, Monday,
25 July 30th. If that doesn't happen, the committee can make

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1 application to me, and I'll take such action as is appropriate
2 under the circumstances. So basically, it comes down to, if
3 the debtors need those couple of extra days to complete their
4 production, they better persuade Ally Bank to agree to an
5 extension. I don't --

6 MR. SCHROCK: Your Honor, it's Ray Schrock.

7 THE COURT: I don't --

8 MR. SCHROCK: We'll certainly take that back to Ally
9 Bank, and I think, on behalf of my client, they would certainly
10 agree to that; it's just a matter of running it down with the
11 FDIC and making sure that we're all on the same page.

12 THE COURT: Okay. I want to make clear, I'm not
13 committing as to how quickly I would decide things. It may be
14 that it should only happen that I'm able to rule from the bench
15 at the conclusion of the hearing. I hope it isn't going to
16 take as much time as I've set aside for the hearing. It won't
17 take more than that; let me put it that way.

18 When we get closer to the date, we can talk more
19 specifically about it. I mean, I frequently -- I shouldn't say
20 frequently because most cases settle, and we don't have that
21 many trials, but I do time trials. If it's going to be more
22 than a day or something like that, I do a time trial; I
23 allocate time to both sides, use it any way you wish.

24 I think I've been pretty fair in allocating the time.
25 The fact of the matter is whenever I've done it, no one's ever

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1 complained they didn't have enough time. In fact, the sides
2 have usually not used all the allocated time. I think what
3 it's done is caused them to streamline their cases. So I don't
4 know whether -- we'll see whether that's going to be necessary
5 here or not; hopefully not.

6 Is there any hope that you'll be able to resolve these
7 issues without going forward with an evidentiary hearing?

8 MR. ENGELHARDT: Your Honor, this is Stefan Engelhardt
9 for the debtor. I have not been involved in those discussions.
10 I've been focused on the discovery and litigation matters.
11 Perhaps I'll defer to Mr. Eckstein and Mr. Schrock who I
12 believe have been involved in those discussions with Mr. Lee.

13 MR. ECKSTEIN: Your Honor, it's Kenneth Eckstein. As
14 I indicated on Tuesday at the status conference on this matter,
15 we did meet last week. We had extensive in-person meetings
16 with the businesspeople for ResCap with executives from Ally
17 Bank, and then we had an extensive meeting with senior
18 executives from AFI that were substantive business discussions,
19 but I'm told that at this point in time we should assume that
20 this is going to go to a hearing. But I do tend to always sort
21 of be optimistic that we can find our way there, and obviously,
22 the committee would like to try to do that.

23 THE COURT: Okay. Look, in whatever -- you either
24 will or won't be able to do it. I don't doubt that there will
25 be good faith efforts to try and resolve it. If it has to go

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1 forward, I want to be sure -- because the applicable -- you
2 both seem to agree that, in one form or another, a business
3 judgment standard may be the appropriate standard to apply,
4 because the parties seem to -- do agree that it's a
5 related-party transaction. That raises -- I don't know. I
6 mean, as soon as I heard that, that's when entire fairness came
7 to mind. I don't know whether that's the applicable standard,
8 but I definitely want the parties to address what standard the
9 Court is to apply in its review of the transaction.

10 MR. LEE: Your Honor, this is Gary Lee. I just wanted
11 to comment on the -- sorry -- from Morrison & Foerster. I just
12 wanted to comment on the state of the negotiations between the
13 parties.

14 THE COURT: Go ahead.

15 MR. LEE: I don't want to give undue hope, but at the
16 last hearing, I did remark that we had disagreements with both
17 the committee and with Ally, and we were sort of reaching
18 towards a tentative agreement with Ally. So the debtors intend
19 to continue -- obviously to do what they can to see how the
20 parties can bridge their disagreements.

21 And the other observation I wanted to make, Your
22 Honor, is I don't think anybody is disagreeing that we need
23 this agreement. I think where the disagreement lies, Your
24 Honor, is who has to pay the indemnity which, to my mind, is a
25 fundamentally different issue to whether this agreement should

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1 be approved. I think everybody recognizes that it's absolutely
2 in the debtors' and the estate's and the creditors' interests
3 that the agreement be approved. The question is on what terms,
4 and then what terms, if any, will be imposed upon the parties
5 that neither of -- that nobody likes, but everybody can live
6 with.

7 MR. ECKSTEIN: And Your Honor, we think there are
8 legal issues raised in that context. We could certainly be
9 prepared to address those at the hearing.

10 THE COURT: Well, I think from the committee's
11 standpoint, I understood this from the last hearing, it's a
12 real large dollar amount that's being currently paid in
13 indemnity payments; there's a lot of money involved. You all
14 seem to agree that servicing should go forward, but the issue
15 is the quantum of this indemnity obligation with the committee
16 taking the position that responsibility should be with AFI and
17 AFI certainly taking the position that it's not. I mean, I
18 only have probably an imprecise understanding of the dispute at
19 this point, but --

20 MR. SCHROCK: Your Honor, it's Ray Schrock. I think
21 that there's not a huge gap between -- dollars-wise between the
22 committee and other parties at this point, but we'll certainly
23 work at it. We do have to go forward at a hearing. We believe
24 that there are issues around what's the entirety of the
25 agreement, as well as other legal argument would have to be

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1 made in that regard. We don't really have a copy of an
2 objection, I know, the committee had stated previously that it
3 was working on. Not filing an objection was very sensitive to
4 the sensitive nature of these proceedings, and we appreciate
5 that. At the same time, we'd like to be able to address any
6 legal issues that are raised.

7 THE COURT: Mr. Schrock, I think you probably have a
8 pretty good idea, Mr. Eckstein doesn't seem like one to hold
9 back on what his issues are, but --

10 MR. SCHROCK: Certainly.

11 THE COURT: So I think you have a pretty clear
12 understanding of what the issues are, whether they're in a form
13 of a filed objection or not. Am I wrong in that?

14 MR. LEE: Your Honor, could I just intercede here
15 because I don't think this is a necessary debate. I think that
16 the committee counsel has indicated that they are prepared to
17 consider providing on an informal basis a letter that sets out
18 in some fashion or another what objections they might have.
19 And the reason why there might be some value in that, Your
20 Honor, is if we're going to both be submitting simultaneous
21 briefs on August the 7th, it might go some way to narrowing the
22 issues if we all, for example, have common grounds that the
23 agreement needs to be reached -- I'm sorry -- needs to be
24 approved and that what we're discussing, Your Honor, isn't the
25 existential threat that's created by rejecting the agreement or

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1 not approving it but rather under what terms it's to be
2 approved.

3 THE COURT: Let me ask you this.

4 MR. LEE: If we could --

5 THE COURT: Have you sat down in the same room
6 together and Mr. Eckstein laid out for you specifically what
7 his problems, legal and factual, are and you've had a chance to
8 respond to that on an informal basis? Has that happened?

9 MR. LEE: Mr. Eckstein and I have the habit of
10 speaking to each other several times every day.

11 THE COURT: But have been in the same room when you've
12 done this?

13 MR. LEE: Only in relation, Your Honor, to what I
14 would describe as the factual predicate. I think that where we
15 are, I'd suggest, not one hundred percent clear is on the legal
16 issues and the legal principals. And if he were kind enough to
17 just --

18 THE COURT: Well, here, I've got a 2 o'clock calendar,
19 so let me just stop you there.

20 MR. LEE: Yeah.

21 THE COURT: I was supposed to be out of town next
22 week, and I've had to alter those plans. I'd like to schedule
23 another telephone, on-the-record, status conference for
24 Wednesday, August 1st, at 4 o'clock. There's a very slight
25 chance I might have to alter that, but I think I should be

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1 able -- that time should work for me.

2 And what I want to happen is, before -- no later than
3 Tuesday, the 31st, Mr. Eckstein, I want you to meet with Mr.
4 Lee and Mr. Schrock and whoever else needs to be part of this
5 discussion. You need to be in the same room with each other.
6 I know you've been talking to each other about a lot of these
7 things, but I really want you to sit down face-to-face, see
8 whether you can narrow -- hopefully, resolve the issues, if
9 not, narrow them. The committee -- I'm sure the committee is
10 talking about this regularly, but you want to be in a position
11 to know with authority what the committee is prepared to accept
12 or recommend for approval.

13 MR. ECKSTEIN: Your Honor, I'm -- and I know you have
14 a hearing, I know you have a calendar, and I will ultimately do
15 whatever Your Honor would like me to do. That said, I think,
16 on this one, I have to say, I -- and I think I was pretty clear
17 on Tuesday about exactly what our views are on this motion.
18 And I spent three full days, really at the request of Mr.
19 Schrock, meeting with my clients with Mr. Marana, who's the CEO
20 of the debtor, with the CEO of Ally Bank, and with the general
21 counsel and the executive vice president of AFI on three
22 consecutive days. Each meeting was several hours --

23 THE COURT: Okay.

24 MR. ECKSTEIN: -- with counsel and clients, and they
25 know exactly what our issues are, factual and legal. And to

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1 suggest that there's any misunderstanding, a formal proposal
2 was made by the committee to which there has not been a
3 response.

4 THE COURT: Okay.

5 MR. ECKSTEIN: And I'm happy to go to whatever
6 meetings I'm told to go to, but I don't want it left suggested
7 that we have not gone over and above what I would think a
8 committee would do to try to frankly solicit a resolution of
9 this issue.

10 THE COURT: Okay. Mr. Schrock?

11 MR. SCHROCK: Yes?

12 THE COURT: Why haven't you responded with a
13 substantive response to Mr. Eckstein's proposal?

14 MR. SCHROCK: We did respond, Your Honor.

15 THE COURT: Okay. Let's --

16 MR. ECKSTEIN: Respectfully, Your Honor, it was --

17 THE COURT: Okay.

18 MR. ECKSTEIN: -- they did not change their position
19 from the position that was filed in the Marano declaration.

20 THE COURT: All right. We'll just go forward. I want
21 to know -- let me know tomorrow whether the hearing is being
22 moved or whether it's going forward on the 14th. If we're
23 going forward on the 14th, that's fine, except that when I say
24 it's fine, if the debtors haven't completed all of -- all, all,
25 electronic, everything -- if they haven't completed all

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1 discovery production by Monday at noon, contact the Court, Mr.
2 Eckstein, and the Court will take appropriate action at that
3 point. So I think you all know what the options are.

4 Forget the point about the face-to-face meeting. I do
5 want to have a status conversation by telephone, as I
6 indicated.

7 MR. ECKSTEIN: Your Honor, I -- and I will assure Your
8 Honor, and I was pleased to hear Mr. Schrock say that he
9 doesn't think we're that far apart. And if that suggests that
10 there are going to be further discussions, I will assure Your
11 Honor that we will be at those meetings. There is no
12 reluctance to sit down and try. As Mr. Lee said, there's a lot
13 of dialogue in this case.

14 THE COURT: I have never perceived that there was any
15 reluctance on your part to sit down and try and resolve issues.
16 So that --

17 MR. ECKSTEIN: If I may, Your Honor, I know you have
18 to go, but there is the simple issue of we have negotiated a
19 confidentiality agreement with AFI.

20 THE COURT: Yes.

21 MR. ECKSTEIN: We've also completed confi's with
22 ResCap and with Cerberus. AFI has now raised the suggestion
23 that there needs to be a protective order. We have not had
24 protective orders in this case with any other party. We didn't
25 think a protective order was needed. We had a separate confi

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1 in addition to bylaws. We have a professional-eyes-only
2 carve-out. But before we sort of raise this to the level of
3 protective order, we frankly wanted to raise it; we thought a
4 confi was sufficient, and we were really unclear why there's a
5 need for a court protective order in order to simply have
6 documents exchanged.

7 THE COURT: Mr. Schrock.

8 MR. ECKSTEIN: And so right now, there's a delay in
9 any documents coming from AFI until that issue got sorted out.

10 THE COURT: Mr. Schrock, what's your answer?

11 MR. SCHROCK: Your Honor, I feel I'm a bit unarmed on
12 that one. My litigator, Mr. McKane, I believe is in the Hawker
13 Beechcraft KEIP hearing at the moment. He had to drop for the
14 2 o'clock hearing. I am aware of the issue. I didn't believe
15 that there was any delay in getting documents over to the
16 committee. In fact, I was told they were going over on a
17 professional-eyes-only basis that I heard Mr. O'Neill say
18 earlier. So we'll work it out, Your Honor, and we'll get to
19 the bottom of it. I just don't have an answer for you at the
20 moment.

21 THE COURT: Mr. Eckstein?

22 MR. ECKSTEIN: Given the speed with which we would
23 have to proceed, I just don't want this to hold up our ability
24 to receive documents, and I can't accept every document on a
25 professional-eyes-only basis; that's just not reasonable.

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1 MR. SCHROCK: Yeah. Mr. Eckstein's right; we're not
2 looking to be unreasonable.

3 THE COURT: I just -- look, the committee needs to
4 have a full and fair opportunity to prepare for and present its
5 case. If there are roadblocks, stumbling blocks that are put
6 in the way of that, I'll just move the hearing; that's what the
7 result is. I don't need to deal with that today. I'm just
8 telling you right now, we'll have a conference call next
9 Wednesday, and I'll see where things are. But before that, I
10 want to know by tomorrow whether the dates -- I need to know
11 whether the dates of the hearing are being moved or not. That
12 I need to know by tomorrow. So you need to come to some
13 agreement among yourselves about that, okay?

14 All right. I have to adjourn this because I've got
15 to --

16 MR. SCHROCK: That's fine, Your Honor.

17 THE COURT: -- start my next hearings. All right.

18 MR. ECKSTEIN: Your Honor, can I assume that if we
19 move to the 16th, that the pleadings are due seven days in
20 advance?

21 THE COURT: Yes.

22 MR. ECKSTEIN: All right. Thank you, Your Honor.

23 THE COURT: Yes.

24 Okay. Thank you, everybody.

25 IN UNISON: Thank you, Your Honor.

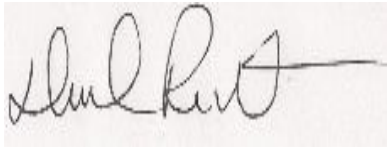
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THE COURT: All right.

MR. LEE: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 2:06 PM)

C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D-635

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